

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
AUCTION OF ADVANCED)	AU Docket No. 06-30
WIRELESS SERVICES,)	
Report No. AUC-06-66-A (Auction No. 66))	

Comments of Communications Advisory Counsel

Communications Advisory Counsel (“CAC”) respectfully responds to the January 31, 2006 Notice in the above-referenced proceeding issued by the Wireless Telecommunications Bureau (“Bureau”). The Bureau seeks comments on various aspects and procedures regarding the auction of Advanced Wireless Services (“AWS”) licenses in the 1710-1755 MHz and 2110-2155 MHz (“AWS-1”) bands scheduled to commence of June 29, 2006.

CAC provides professional legal and advisory services¹ to several hundred rural telecommunications carriers including rural incumbent and competitive local exchange service providers, long distance carriers, and wireless carriers. Many, if not all, of these rural carriers are already involved in the provision of landline broadband services and they stand ready, willing and able to participate in the nation-wide goal of increased broadband deployment. The rural telecommunications carriers served by CAC look forward to the opportunities provided by the dissemination of the AWS-1 bands in the manner anticipated by Congress. The correct process will result in fostering the timely deployment of wireless broadband in rural areas by ensuring that Designated Entities (“DEs”) including rural telephone companies and other carriers qualifying as small businesses have a meaningful opportunity to obtain licenses that will better enable them to fulfill their commitment to the communities they serve through the implementation of new and advanced telecommunications technologies and services.

I. The Auction 66 Processes and Procedures Should Be Evaluated On The Basis Of Whether The Adoption Of A Process Or Procedure Will Foster Or Impede The Dissemination of the AWS-1 Licenses To DEs.

CAC recognizes that the Commission has established a separate proceeding to consider modification of its DE auction rules by issuing the February 3, 2006 Further Notice of Proposed Rulemaking in WT Docket No. 05-211 (the “FNPRM”). Separate and apart from the issues raised in the FNPRM. However, CAC urges the Bureau to recognize and address the concerns of DEs that may be affected by the Bureau’s consideration of the Auction 66 processes and procedures addressed by the Notice.

When it established initial rules for the auction of AWS spectrum, the Commission concluded that “adopting set-asides or eligibility restrictions would not be necessary.”² The Commission has indicated its hope that its rules will ensure that designated entities are given the “opportunity to participate” in an auction of AWS spectrum by its decision to establish a range of geographic licensing areas including relatively small areas, Cellular Market Areas (“CMAs”), similar to Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs), as well as larger spectrum block sizes.³

The CAC, and the rural carriers it serves, are concerned that providing “the opportunity to participate” is far different from fostering a meaningful opportunity to disseminate licenses to DEs. With the advent of Auction 66 and the licensing of the AWS-1 bands that may be used to increase broadband deployment throughout the nation, the Commission has within its grasp the opportunity to “get it right” in stark contrast to the policies of prior administrations.

The mistakes of the past resulted in the vast majority of an entire block of PCS spectrum held hostage by an entity that claimed DE status going into the auction. Utilizing Commission

¹ CAC was formerly known as “Kraskin, Moorman & Cosson” and “Kraskin, Lesse & Cosson.”

² Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, 18 FCC Rcd 25162 (2003)(*AWS-1 Service Rules Order*), 18 FCC Rcd at 25189 ¶ 68.

³ *Id.*

policies established by prior administrations, that entity was enabled to come out of the auctions: 1) with assets far in excess of the limits established for DE status; and 2) without the financial ability to pay for its auction success much less deploy service to the public on a timely basis.

The significant, but often overlooked, result of that DE auction fiasco was that the public was deprived of the development of competitive spectrum services in the manner anticipated by Congress simply because of the processes and procedures established by a prior administration. On the basis of reports from representatives of numerous rural carriers, CAC reports that these smaller companies have concluded, , undoubtedly like many other legitimate DEs, that the policies of prior Commission administrations not only failed to disseminate licenses to DEs in a meaningful manner, but further resulted in discouraging rural carrier participation in spectrum auctions.

This result is in contrast to the initial rural carrier participation in the deployment of cellular services in rural areas. As a result of that participation, spectrum was deployed in many rural communities that may otherwise not have substantial service. The reality of that conclusion is demonstrated by the fact that spectrum licensed by auction that covers both rural and non-major urban markets often lies fallow except along the roads that run through those communities. At the same time, rural and small telecommunications carriers that serve those same communities would happily deploy the unused spectrum in order to enhance and complement the services they already provide if they had a meaningful opportunity to obtain the spectrum license in those communities.

Many of the rural telecommunications carriers served by CAC regret that the Commission did not determine to set aside AWS-1 license blocks to be auctioned only to rural telephone companies and other DEs. The fact that all AWS-1 license blocks are open to all potential participants renders it all the more important that each of the procedures and processes

adopted for Auction No. 66 encourage, and do not impede, successful participation by rural telephone companies and other DEs. Within that context, the CAC offers the following observations on the matters with respect to which the Bureau has sought comment in its January 31, 2006 Notice.

II. The Auction No. 66 Processes and Procedures Should Not Include Complex Package Bidding That Fosters The Interests Of Large Carriers At The Expense of DEs.

In its Notice, the Bureau proposes to auction all of the AWS-1 licenses in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format. The Bureau, however, seeks comments on the feasibility and desirability of allocating the AWS-1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the FCC's package bidding format ("SMR-PB"). The Bureau suggests this alternative: "We recommend that the two auctions be run concurrently, rather than sequentially, in order to permit bidders interested in winning licenses in both auctions to coordinate their bidding across auctions, and in order to facilitate the application of the aggregate reserve price."⁴

CAC questions how the public interest will be served by adopting the dual auction package bid concept. It is clear that this concept assists large entities attempting to aggregate spectrum blocks with minimal risk. It is not clear, however, that this objective could remotely coincide with the public interest which includes the dissemination of spectrum to DEs. If the interest represented by the Bureau's alternative proposal is to facilitate large carriers in their efforts to accumulate large blocks of spectrum, that interest has already been addressed by the decision to auction 5 of the 6 blocks of AWS spectrum in "Large" population blocks (EAs) and "Very Very Large" population blocks (REAGs). The large entities seeking large blocks do not require additional help in the form of package bidding; and the public interest clearly is not

consistent with this result. Package bidding in dual auctions will unnecessarily make the auction process more complex for DEs and all participants.

On its face, the dual auction package bidding proposal clearly serves large entities that seek to aggregate spectrum and disservices DEs that may likely focus on bidding to provide service to a single license area, or a few licenses within a community of interest. CAC respectfully submits that the Bureau should maintain the single auction approach. The Bureau concludes, “we believe that an SMR auction format, together with a bandplan which offers bidders the option to bid on several blocks of large regional licenses, will provide bidders with the opportunity to create efficient aggregations of licenses without creating the difficulties that a package bidding format may introduce for bidders trying to win single licenses or smaller groups of licenses.”⁵ The CAC submits that any process or procedure such as package bidding that promotes only ease for large entity auction participants seeking to aggregate multiple licenses and spectrum blocks is adverse both to the interests of DEs and the public interest.

II. The Auction 66 Processes and Procedures Should Not Impede DE Participation or DE Auction Success.

The Bureau has also sought comment with respect to a variety of other processes and procedures including: whether bidder information should be withheld; round structure and the time for bidding rounds and review periods; stopping rules; upfront payments and bidding eligibility; the activity rule and activity rule waivers; minimum opening bids and reserve prices; bid amounts; bid removal and bid withdrawal; a proposal to increase the percentage of a withdrawn bid to be assessed as an interim withdrawal payment percentage; and a proposal to increase the default payment percentages to be assessed if the bidder defaults on a payment or is disqualified.

⁴ Notice, p. 4-5.

⁵ Notice, p. 4.

Distinctions in the auction rules applicable to DEs are appropriate.

Each of these matters can be addressed in a manner that could either foster or impede the efforts of rural telephone companies and other DEs to obtain spectrum licenses in auction No.

66. CAC respectfully urges the Bureau to ensure that it considers each of the auction processes and procedures in a manner that demonstrably takes into consideration “the possible significant economic impact on small entities of the proposals suggested.”⁷ Each of the processes and procedures could be resolved in a manner that wrongly provides large entities with tactical advantages over smaller entities in addition to the financial position and prowess they already enjoy.⁸ Accordingly, CAC respectfully urges the Bureau to consider the adoption of procedures and rules that are crafted in a manner that encourages the dissemination of licenses to DEs by establishing rational distinctions in the rules.

Upfront Payments and Minimum Bids

The upfront payments and minimum bids required of DEs should be smaller than that required of larger entities in order to promote DE participation. Neither any party nor the public would be harmed by encouraging DEs to participate by reducing the level of upfront payments they would be required to make. Similarly, reducing minimum bids will not harm the public. If the market license is robust, the bid price will accelerate. If not, the public will be served by encouraging DEs to place minimum bids, winning the license, and deploying new service.

⁷ In addition to the Initial Regulatory Flexibility Analysis (“IRFA”) required by the Regulatory Flexibility Act (5 U.S.C. § 603) with respect to any potential changes in auction rules that the Commission may make with respect to DEs in the FNPRM, the Bureau is urged to give rigorous consideration that ensures that the procedures and processes it adopts will foster the successful participation of DEs in Auction No. 66.

⁸ CAC notes that the auction is scheduled to commence only four months after the Reply Comments on the Notice are due. While the public interest requires the speedy availability of spectrum available for broadband services, the competing public interest to ensure that the auction processes and procedures are equitable has not been subjugated. CAC respectfully questions why the Bureau did not previously undertake to seek comment on its auction processes and procedures. The very short time period between Notice and Comment and Reply Comments prejudices the interests of DEs. Unlike larger carriers with ready resources to devote to analysis and advocacy associated with the Notice, rural companies and other DEs are far less likely to have the resources and experience to analyze and comment on each aspect of the Notice within the short time frame that the Bureau has allowed. Accordingly, the

Bid Waivers and Minimum Activity Rules

Similarly, the minimum activity rules can be fashioned in a manner that recognizes the distinctions between DEs and larger bidding entities. DEs can rightfully be provided with additional activity waivers to promote their continued participation in the auction during the later stages of the auction when it is imperative for smaller entities with limited resources to have sufficient opportunity to evaluate their subsequent bidding activity without loss of eligibility.

In this regard, the Bureau should also consider establishing more liberal minimum activity rules for DEs in order to ensure that they do not unnecessarily lose eligibility to obtain licenses. In all likelihood, rural companies and other DEs may focus their bidding interest on a few market areas within their community of interest in contrast to larger carriers with multi-regional and nation-wide interests. Under these circumstances, application of the same minimum activity rules to both large carriers and DEs may have a perverse impact on DEs and the auction process. For example, if a DE only applied to obtain licenses in two CMAs, it would be required to bid on each CMA in every round or lose eligibility except when it exercised a waiver. CAC accordingly urges that the Bureau impose no minimum activity requirements on DEs that apply to bid on 1% or less of the licenses available in Auction No. 66. In addition, reduced minimum activity requirements for all DEs irrespective of the number of licenses for which they apply to bid will also foster DE participation and success in Auction No. 66.

Bid Percentage Increases

With respect to bid percentage increases, CAC submits that distinctions in the requirements imposed on DEs from those imposed on other bidders will serve the public interest and foster the Congressional goals with respect to DE participation. If bid percentage increase requirements were established at a lower level for DEs, the bid percentage increase rules would not be as likely to discourage continued participation by DEs in the auction bidding. The public

burden rightfully falls to the Bureau to demonstrate in its decisions regarding the Notice that sufficient consideration

would not be harmed by reducing the bid percentage increase for DEs because more bidding will be encouraged by smaller entities. For example, when faced with a high bid in a later auction round, a high bid increase percentage could discourage a DE from further bidding. The bidding for the license could cease at that point. If, however, the bid increase percentage for DEs was reduced from that applicable to large entities, the DE could be encouraged to bid further. As with each of the processes and procedures under consideration, careful attention is warranted to ensure that the rules adopted truly foster an auction process that will be consistent with the public interest and Congressional goals.

Conclusion

The rural companies served by CAC recognize the opportunity that Auction No. 66 may afford small carriers and other DEs to participate in the timely deployment of advanced broadband wireless services. Consideration of the auction processes and rules raised by both the Bureau's Notice and the FNPRM affords the Commission the opportunity to utilize the unfortunate lessons derived from the past policies established by prior Commission administrations with respect to the failed attempts to meet the Congressional mandate to disseminate spectrum licenses to rural telephone companies and other DEs.

Smaller entities have been undoubtedly discouraged by the prior practices and processes, but still stand ready – if given a meaningful opportunity – to commit to the expedient deployment of new and advanced services not only with respect to the AWS-1 licenses, but also with regard to the undeveloped and un-partitioned spectrum that lies fallow held by large entity winners of prior auctions. On behalf of the rural telecommunications carriers it serves, CAC respectfully urges both the Bureau and the Commission to seize the opportunity to ensure that the results of Auction No. 66 are consistent with Congressional goals to disseminate spectrum

licenses to rural telephone companies and other small carriers in order that they may better serve the rural and underserved communities to which they are committed.

Respectfully submitted,

s/Stephen G. Kraskin

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